

*Washington Quarantine Law held v
as interference with interstate com*

SUPREME COURT OF THE UNITED STATES.

No. 187.—OCTOBER TERM, 1925.

Oregon-Washington Railroad & Navigation Company, Plaintiff in Error, <i>vs.</i> State of Washington.	}	In Error to the Supreme Court of the State of Washington.
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[March 1, 1926.]

Mr. Chief Justice TAFT delivered the opinion of the Court.

This was a bill of complaint filed by the State of Washington in the Superior Court of Thurston County of that State against the defendant, the Oregon-Washington Railway & Navigation Company, an interstate common carrier in the States of Idaho, Oregon and Washington. The bill averred that there existed in the areas of the States of Utah, Idaho, Wyoming, Oregon and Nevada, an injurious insect popularly called the alfalfa weevil, and scientifically known as the *phytonomus posticus*, which fed upon the leaves and foliage of the alfalfa plant, to the great damage of the crop; that the insect multiplied rapidly and was propagated by means of eggs deposited by the female insect upon the leaves and stalks of the plant; that when the hay was cured, the eggs clung to and remained dormant upon the hay and even in the meal made from it; that the eggs and live weevils were likely to be carried to points where hay was transported, infecting the growing crop there; that when the hay was carried in common box cars the eggs and live weevils were likely to be shaken out and distributed along the route and communicated to the agricultural lands adjacent to the route; that a proper inspection to ascertain the presence of the eggs or weevils would require the tearing open of every bale of hay and sack of meal, involving a prohibitive cost of inspection, and that the only practical method of preventing the spread into uninfested districts was to prohibit the transportation of hay or meal from the district in which the weevil existed; that the pest is new to, and not generally distributed within, the State of Wash-

ington; that there is no known method of ridding a district infested of the pest; that subsequent to June 8, 1921, and prior to September 17, 1921, information was received by the Washington Director of Agriculture that there was a probability of the introduction of the weevil into the State across its boundaries; that he thereupon investigated thoroughly the insect and the areas where such pests existed and ascertained it to be in the whole of the State of Utah, all portions of the State of Idaho lying south of Idaho County, the counties of Uinta and Lincoln in the State of Wyoming, the county of Delta in the State of Colorado, the counties of Malheur and Baker in the State of Oregon, and the county of Washoe in the State of Nevada; that he, with the approval of the Governor of the State, thereupon, on or about September 17, 1921, made and promulgated a quarantine regulation and order under the terms of which he declared a quarantine against all of the above described areas and forbade the importation into Washington of alfalfa hay and alfalfa meal, except in sealed containers, and fixed the boundaries of the quarantine. The bill further averred that the defendant, knowing of the proclamation, and in violation thereof, had caused to be shipped into Washington, in common box cars, and not in sealed containers, approximately 100 cars of alfalfa hay, consigned from various points in the State of Idaho lying south of Idaho County and through the State of Oregon and into the State of Washington, in direct violation of the quarantine order; and that unless enjoined, the defendant would continue to make these shipments from such quarantined area in the State of Idaho into and through the State of Washington; that large quantities of alfalfa were grown in the eastern and central portions of Washington and adjacent to the railroad lines of the defendant and other railroads over which such shipments of alfalfa hay were shipped and were likely to be shipped in the future, unless an injunction was granted, to the great and irreparable damage of the citizens of Washington growing alfalfa therein. A temporary injunction was issued, and then a demurrer was filed by the defendants. The demurrer was overruled. An answer was filed and in each of the pleadings was set out the claim by the defendant that the action and proclamation of the Director of Agriculture and the Governor, and chapter 105 of the Laws of Washington of 1921, under which they acted, were in

contravention of the interstate commerce clause of the Federal Constitution, and in conflict with an act of Congress.

At the hearing there was evidence on behalf of the State that the Oregon-Washington and Northern Pacific Railroads ran through the parts of the State where the alfalfa was raised; that the weevil had first appeared in Utah in 1904 in Salt Lake City, and that it had spread about 10 miles a year; that it came from Russia and Southern Europe; that it would be impossible to adopt any method of inspection of alfalfa hay to keep out the weevil not prohibitory in cost; that in Europe the weevil is not a serious pest, because its natural enemies exist there and they keep it down; that the U. S. Government had attempted to introduce parasites, but that it takes a long time to secure a natural check from such a method; that methods by using poison sprays, by burning and in other ways had been used to attack the pest, but that no one method has been entirely successful; that there is no practical way of eliminating the beetles completely if the field once becomes infected, and the continuance of the pest will be indefinite; that the great danger of spreading the infection is through the transfer of hay from one section to another. In behalf of the defendant it was testified that the prevalent opinion in regard to the spread of the alfalfa weevil and the damage it was doing was vastly exaggerated; that the spread of the weevil from hay shipped in the cars, through the State of Washington was decidedly improbable. The Superior Court made the temporary injunction permanent and the Supreme Court of Washington affirmed the decree. This is a writ of error under section 237 of the Judicial Code to that decree.

By chapter 105 of the Washington Session Laws of 1921, p. 308, the Director is given the power and duty, with the approval of the Governor, to establish and maintain quarantine needed to keep out of the State contagion or infestation by disease of trees and plants and injurious insects or other pests, to institute an inspection to prevent any infected articles from coming in except upon a certificate of investigation by such Director, or in his name by an inspector. Upon information received by the Director, of the existence of any infectious plant, disease, insect or weed pest, new to or not generally distributed within the State, dangerous to the plant industry of the State, he is required to proceed to investigate the

same, and then enforce necessary quarantine. There is a provision for punishment of a fine or not less than \$100, or more than \$1,000, or by both such fine and imprisonment, for violation of the act.

In the absence of any action taken by Congress on the subject matter, it is well settled that a state in the exercise of its police power may establish quarantines against human beings or animals or plants, the coming in of which may expose the inhabitants or the stock or the trees, plants or growing crops to disease, injury or destruction thereby, and this in spite of the fact that they necessarily affect interstate commerce.

Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 1, speaking of inspection laws, says at p. 203:

"They form a portion of that immense mass of legislation, which embraces everything within the territory of a State, not surrendered to the general government: all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass."

Again, he says at p. 205:

"The acts of Congress, passed in 1796 and 1799, empowering and directing the officers of the general government to conform to, and assist in the execution of the quarantine and health laws of a State, proceed, it is said, upon the idea that these laws are constitutional. It is undoubtedly true, that they do proceed upon that idea; and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment that a State may rightfully regulate commerce with foreign nations, or among the States; for they do not imply that such laws are an exercise of that power, or enacted with a view to it. On the contrary, they are treated as quarantine and health laws, are so denominated in the acts of Congress, and are considered as flowing from the acknowledged power of a State, to provide for the health of its citizens. But, as it was apparent that some of the provisions made for this purpose, and in virtue of this power, might interfere with, and be affected by the laws of the United States, made for the regulation of commerce, Congress, in that spirit of harmony and conciliation, which ought always to characterize the conduct of governments standing in the relation which that of the Union and those of the States bear to each other, has directed its officers to aid in the execution of these laws; and has, in some measure, adapted its own legislation to this object, by making pro-

visions in aid of those of the States. But, in making these provisions, the opinion is unequivocally manifested, that Congress may control the State laws, so far as it may be necessary to control them, for the regulation of commerce."

This Court in the *Minnesota Rate Cases*, 230 U. S. 352, 406, said:

"Quarantine regulations are essential measures of protection which the States are free to adopt when they do not come into conflict with Federal action. In view of the need of conforming such measures to local conditions, Congress from the beginning has been content to leave the matter for the most part, notwithstanding its vast importance, to the States and has repeatedly acquiesced in the enforcement of state laws. . . . Such laws undoubtedly operate upon interstate and foreign commerce. They could not be effective otherwise. They cannot, of course, be made the cover for discriminations and arbitrary enactments having no reasonable relation to health (*Hannibal & St. Joseph Railroad Co. v. Husen*, 95 U. S. 465, 472, 473); but the power of the State to take steps to prevent the introduction or spread of disease, although interstate and foreign commerce are involved (subject to the paramount authority of Congress if it decides to assume control), is beyond question. *Morgan's &c. S. S. Co. v. Louisiana*, 118 U. S. 455; *Missouri, Kansas & Texas Ry. Co. v. Haber*, 169 U. S. 613; *Louisiana v. Texas*, 176 U. S. 1; *Rasmussen v. Idaho*, 181 U. S. 198; *Compagnie Francaise, etc. v. Board of Health*, 186 U. S. 380; *Reid v. Colorado*, 187 U. S. 137, 138; *Asbell v. Kansas*, 209 U. S. 251."

Counsel for the company argues that the case of *Railroad Co. v. Husen*, 95 U. S. 465, is an authority to show that this law as carried out by the proclamation goes too far, in that it forbids importations from certain parts of Idaho, of Utah, of Nevada, of alfalfa hay, without qualification and without any limit of time. The *Husen* case is to be distinguished from the other cases cited, in that the Missouri statute there held invalid was found by the Court not to be a quarantine provision at all. It forbade the importation into Missouri for eight months of the year of any Texas, Mexican or Indian cattle without regard to whether the cattle were diseased or not, and without regard to the question whether they came from a part of the country where they had been exposed to contagion. We think that here the investigation required by the Washington law and the investigation actually made into the existence of this pest and its geographical location makes the

law a real quarantine law, and not a mere inhibition against importation of alfalfa from a large part of the country without regard to the conditions which might make its importation dangerous.

The second objection to the validity of this Washington law and the action of the state officers, however, is more formidable. Under the language used in *Gibbons v. Ogden, supra*, and the *Minnesota Rate Cases, supra*, the exercise of the police power of quarantine, in spite of its interfering with interstate commerce, is permissible under the Interstate Commerce clause of the Federal Constitution "subject to the paramount authority of Congress if it decides to assume control."

By the Act of Congress of August 20, 1912, 37 Stat. 315, c. 308, as amended by the Act of March 4, 1917, 39 Stat. 1165, c. 179, it is made unlawful to import or offer for entry into the United States, any nursery stock unless permit had been issued by the Secretary of Agriculture under regulations prescribed by him.

Section 2 makes it the duty of the Secretary of the Treasury to notify the Secretary of Agriculture of the arrival of any nursery stock and forbids the shipment from one State or territory or district of the United States into another of any nursery stock imported into the United States without notifying the Secretary of Agriculture, or at his direction, the proper state, territorial or district official to which the nursery stock was destined. Whenever the Secretary of Agriculture shall determine that such nursery stock may result in the entry of plant diseases or insect pests, he shall promulgate his determination of this, but shall give due notice and a public hearing at which any interested party might appear before the promulgation.

Section 7 provides that whenever, in order to prevent the introduction into the United States of any tree, plant or fruit disease or any injurious insect, not theretofore widely prevalent or distributed, within and through the United States, the Secretary shall determine that it was necessary to forbid the importation into the United States, he shall promulgate such determination, and such importations are thereafter prohibited.

Section 8 of the Act was amended by the Agricultural Appropriation Act of March 4, 1917, and reads as follows:

"Sec. 8. That the Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the

United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States; and the Secretary of Agriculture is directed to give notice of the establishment of such quarantine to common carriers doing business in or through such quarantined area, and shall publish in such newspapers in the quarantined area as he shall select notice of the establishment of quarantine. That no person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided. That it shall be unlawful to move, or allow to be moved, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from any quarantined State or Territory or District of the United States or quarantined portion thereof, into or through any other State or Territory or District, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. That it shall be the duty of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined State or Territory or District of the United States, or quarantined portion thereof, into or through any other State or Territory or District; and the Secretary of Agriculture shall give notice of such rules and regulations as hereinbefore provided in this section for the notice of the establishment of quarantine: *Provided*, That before the Secretary of Agriculture shall

promulgate his determination that it is necessary to quarantine any State, Territory, or District of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard, either in person or by attorney."

Section 10 of the Act provides that any person who shall violate any provisions of the Act, or who shall forge, counterfeit or destroy any certificate provided for in the Act or in the regulations of the Secretary of Agriculture shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court. It is made the duty of the United States attorneys diligently to prosecute any violations of this act which are brought to their attention by the Secretary of Agriculture, or which come to their notice by other means, and that for the purpose of carrying out the provisions of the act, the Secretary of Agriculture shall appoint from existing Bureaus in his office, a commission of five members employed therein.

It is impossible to read this statute and consider its scope without attributing to Congress the intention to take over to the Agricultural Department of the Federal Government the care of the horticulture and agriculture of the states, so far as these may be affected injuriously by the transportation in foreign and interstate commerce of anything which by reason of its character can convey disease to and injure trees, plants or crops. All the sections look to a complete provision for quarantine against importation into the country and quarantine as between the states under the direction and supervision of the Secretary of Agriculture.

The courts of Washington and the counsel for the State rely on the decision of this Court in *Reid v. Colorado*, 187 U. S. 137, as an authority to sustain the validity of the Washington law before us. The *Reid* case involved the constitutionality of a conviction of Reid for violation of an Act of Colorado to prevent the introduction of infectious or contagious diseases among the cattle and horses of that State. The law made it unlawful for any person, association or corporation to bring or drive any cattle or horses, suffering from such disease, or which had within ninety days prior

thereto been herded or brought into contact with any other cattle or horses, suffering from such disease, into the State, unless a certificate or bill of health could be produced from the state veterinary sanitary board that the cattle and horses were free from all infectious or contagious diseases. It was urged that it was inconsistent with the Federal Animal Industry Act. This directed a study of contagious and communicable diseases of animals and the best method of treating them by the Federal Commissioner of Agriculture, to be certified to the executive authority of each state and the cooperation of such authority was invited. If the authorities of the state adopted the plans and methods advised by the Department, or if such authorities adopted measures of their own which the Department approved, then the money appropriated by Congress was to be used in conducting investigations and in aiding such disinfection and quarantine measures as might be necessary to prevent the spread of the diseases in question from one state or territory into another. This Court held that Congress did not intend by the Act to override the power of the states to care for the safety of the property of their people, because it did not undertake to invest any officer or agent of the Department with authority to go into a state and without its assent take charge of the work of suppressing or extirpating contagious, infectious or communicable diseases there prevailing, or to inspect cattle or give a certificate of freedom from disease for cattle of superior authority to state certificates.

It is evident that the Federal statute under consideration in the *Reid* case was an effort to induce the states to cooperate with the general Government in measures to suppress the spread of disease without at all interfering with the action of the state in quarantining or taking any other measures to extirpate it or prevent its spread. Indeed the Commissioner of Agriculture in that case was to aid the state authorities in their quarantine and other measures from federal appropriation. The act we are considering is very different. It makes no reference whatever to cooperation with state authorities. It proposes the independent exercise of Federal authority with reference to quarantine in interstate commerce. It covers the whole field so far as the spread of the plant disease by interstate transportation can be affected and restrained. With such authority vested in the Secretary of Agri-

culture, and with such duty imposed upon him, the state laws of quarantine that affect interstate commerce and thus Federal law can not stand together. The relief sought to protect the different states, in so far as it depends on the regulation of interstate commerce, must be obtained through application to the Secretary of Agriculture.

In the relation of the states to the regulation of interstate commerce by Congress there are two fields. There is one in which the state can not interfere at all, even in the silence of Congress. In the other, and this is the one in which the legitimate exercise of the state's police power brings it into contact with interstate commerce so as to affect that commerce, the state may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action.

Cases of the latter type are the *Southern Railway Company v. Reid*, 222 U. S. 424; *Northern Pacific Railway Company v. Washington*, 222 U. S. 370, 378; *C. R. I. & P. Ry. Co. v. Elevator Company*, 226 U. S. 426, 435; *Erie Railroad Company v. New York*, 233 U. S. 671, 681; and *Missouri Pacific Railroad Company v. Stroud*, 267 U. S. 404.

Some stress is laid by the counsel of the State on the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Company*, 211 U. S. 612. There the question was whether a state court might by mandamus compel a railroad company, under its common law obligation as a common carrier, to afford equal local switching service to its shippers, notwithstanding the fact that the cars in regard to which the service was claimed were two-thirds of them in interstate commerce and one-third in intrastate commerce. The contention was that the enactment of the Interstate Commerce law put such switching wholly in control of the Interstate Commerce Commission. The case was one on the border line, three judges dissenting. The number of cases decided since that case and above cited have made it clear that the rule, as it always had been, was not intended in that case to be departed from. That rule is that there is a field in which the local interests of states touch so closely upon interstate commerce that in the silence of Congress on the subject, the states may exercise their police powers and local switchings as in that case, and quarantine as in the case before us, are in that field. But

when Congress has acted and occupied the field, as it has here, the power of the states to act is prevented or suspended.

It follows that pending the existing legislation of Congress as to quarantine of diseased trees and plants in interstate commerce, the statute of Washington on the subject can not be given application. It is suggested that the states may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the states to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that can not be given to the federal statute. The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted.

The decree of the Supreme Court of Washington is

Reversed.

Mr. Justice McREYNOLDS and Mr. Justice SUTHERLAND, dissenting.

We cannot think Congress intended that the Act of March 4, 1917, without more should deprive the States of power to protect themselves against threatened disaster like the one disclosed by this record.

If the Secretary of Agriculture had taken some affirmative action the problem would be a very different one. Congress could have exerted all the power which this statute delegated to him by positive and direct enactment. If it had said nothing whatever certainly the State could have resorted to the quarantine; and this same right, we think, should be recognized when its agent has done nothing.

It is a serious thing to paralyze the efforts of a State to protect her people against impending calamity and leave them to the slow charity of a far-off and perhaps supine federal bureau. No such purpose should be attributed to Congress unless indicated beyond reasonable doubt.